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NOTES.

EFFECT ON PARTNERSHIP OBLIGATIONS OF INDIVIDUAL DISCHARGE IN BANKRUPTCY.—In a recent case in New York, it was held, by Ingraham and Laughlin, JJ., that a discharge of an individual partner released him not only from his individual debts, but from debts owing by the firm, whether the firm had assets or not; and this, though the firm debts were not scheduled as such, but all the debts, joint as well as several, were thrown into a common schedule. *N. Y. Inst. for Deaf and Dumb* v. *Crockett* (1907) 36 N. Y. L. J. 1535.

The rule in England has always been settled that an adjudication of an individual partner as bankrupt discharged him from partnership debts, because bankruptcy discharged him from all debts and partnership debts are also his individual debts. *Ex parte Yale*, 3 P. Wms. 24 (note). In America there has been a considerable confusion among the authorities on this point. Under the Statute of 1867 (14 St. at L. p. 534, § 36) courts rule differently. *Corey* v. *Perry* (1877) 67 Me. 140; *Mattix* v. *Leach* (1896) 16 Ind. App. 112. *In re Little* (1868) 1 N. B. R. 341, a leading case, held that the statute contemplated only one proceeding and unless the other partners were joined and the partnership assets administered, the discharge would not be effective to bar firm debts. In view of the fact that in many cases no act of bankruptcy could be proved against the firm, and hence no reason be shown to administer the firm assets in bankruptcy, the result of this view would be that individual discharges would be rendered worthless. *In re Frear* (1868) 1 N. B. R. 660, 664. The present statute expressly provides, § 5 (h), that the partnership assets are not to be administered in bankruptcy if some, only, of the partners are insolvent; but that the solvent partner is to wind up the

firm and account for the interest of the insolvent partner. The reason given in *In re Little*, supra, therefore, would not apply under the present statute, and there would seem to be no reason why an individual discharge should not equally discharge the individual from firm liabilities. Burdick, Law of Partnership 305. Under the present statute all the individual's estate would pass to his assignee, including his interest in the partnership, for which the solvent members must account as speedily as possible; the partnership debts are provable against the individual; and the statute provides that all provable debts shall be discharged. § 17. The cases, however, cannot be said to bear out this conclusion. The earlier cases follow the rule laid down in *In re Little*. *In re Freund* (1899) 1 Am. B. R. 25. Other cases, also following decisions under St. of 1867, have allowed the effect contended for by the discharge in the principal case, if there are no firm assets, impliedly accepting the doctrine of *In re Little*, where there are firm assets, See Collier, Bank., 5 ed., p. 74, but making this exception on the ground that if there are no firm assets there is no necessity for administering the firm estate in bankruptcy. *In re Abbe* (1874) 2 N. B. R. 75. Cf. Collier, p. 74, and *In re Hirsch* (1899) 3 Am. B. R. 344. Other cases, conceding the result, deny its effect unless the debts were scheduled as individual and as partnership respectively. The cases in the first and second classes overlook entirely § 5 in the present statute. That section provides, first, that there shall be a separate administration of the partnership estate, which would remove the objection raised in *In re Little*, supra, and secondly that the individual partner's interest in the partnership shall be accounted for by the solvent partner, which removes the objection raised in other cases, decided under the previous statute, that the individual's "estate in the firm" is not in bankruptcy. *Crompton* v. *Conkling* (1877) Fed. Cas. No. 3407. These cases therefore, cannot be supported. The last class of cases which, in terms, say, that the discharge will not operate against partnership debts unless they are so scheduled in contradistinction to the individual debts, are also unsupportable. *In re McFaun* (1899) 3 Am. B. R. 66; *In re Laughlin* (1899) 3 Am. B. R. 1. In many of these cases (see *In re Laughlin*, supra) the question before the court was merely whether a discharge shall be given, without an amendment of the petition, under § 14, which is an entirely different question from the effect of the discharge, once given, under § 17. We may concede that as a matter of convenience in administration the court should require a scheduling of liabilities as individual and partnership, separately, since in the sharing of dividends, both sets of creditors do not receive *pari passu*. But this is a different question from annulling the effect of the discharge as a punishment of the debtor for his failure to comply with this form laid down by a particular court, when § 17 expressly provides that the discharge shall release all provable claims. § 17 makes notice, which the creditor receives whether his claim is filed as an individual or partnership obligation, the essential thing; and it is difficult to see how the courts can justify the language used.

DAMAGES FOR MENTAL ANGUISH IN TELEGRAPH CASES UNDER A CONFLICT OF LAWS.—A recent case in South Carolina calls up a number of